

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2339 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HARBILAS RAI

Versus

MAHESH PRAKASH

Appearance:

MR PM THAKKAR for Petitioners
MR KB ANANDJIWALA for Respondent No. 1
MR TRIVEDI, APP for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/06/1999

ORAL JUDGEMENT

1. Heard Mr. Tirmizi on behalf of the applicants,
Mr. Anandjiwala on behalf of respondent No.1 and Mr.
Trivedi, learned Additional Public Prosecutor on behalf
of respondent No.2.

2. The applicants herein seek to quash the complaint

filed by respondent No. 1 before Special Court, at Rajkot, bearing Misc. Criminal Application No.515 of 1995. The petitioners No.1 and 2 are Chief Security Commissioner & Deputy Chief Security Commissioner in Railway Protection Force and respondent No.1 is working as Inspector in R.P.F.

3. Mr. Tirmizi's core of argument is that all the actions that are complained of were taken by the applicants in discharge of their official duties and the complaint is filed after lapse of number of years. Even if the complaint is taken at face value, the last such action by petitioner No.2 was in 1993. He further submitted that sanction as required under Section 197 of the Code of Criminal Procedure has not been obtained and, therefore also, the complaint must be quashed. He submitted that no case of any atrocity is made out in the complaint and if such complaints are entertained, no officer would be able to take any action independently in the interest of the institution. He, therefore, urged that the complaint may be quashed.

4. Mr. Anandjiwala, on the other hand, submitted that Section 197 of the Code of Criminal Procedure will not be applicable in the instant case as the complaint is under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" in short) and, therefore, no sanction is required. He further submitted that even according to the Railway Protection Force Rules, 1987, particularly Rule 57 and 114, sanction is not necessary. He lastly submitted that the petitioners have approached this Court directly. This point could have been raised by the petitioners even before the Trial Court and, therefore, the petition may be dismissed.

5. Mr. Trivedi submitted that, if the action alleged to have been taken by the petitioners is an official action, then sanction is necessary. No sanction is required for a private action and, therefore, appropriate orders may be passed.

6. This Court is taken through the complaint by Mr. Tirmizi, threadbare. It transpires from the complaint that the incidents range from 1983 to 1993. The accusations are that a series of charge sheets were lodged against the respondent No.1-complainant, which, according to him, are false and vexatious. However, these actions were taken by the petitioners in their official capacity for an alleged lapse on the part of the

complainant which they believed to be true. The allegation is also against petitioner No.2 that he differed with the findings of the Inquiry Officer, which action, according to the complainant-respondent No.1, was malicious. If the allegations made in paragraph 17 of the complaint is perused, they relate to the proceedings initiated by applicant No.2 against the complainant which are clearly indicative of an action which is of an official nature. Under these circumstances, this Court is of the view that all the allegations made in the complaint relate to official action taken by the petitioners. If Section 197 of Code Criminal Procedure is considered, it reads as under :-

"197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State, of the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central

Government" occurring therein, the expression "State Government" were substituted.

- (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

It is clear from the Section that a Court shall not take cognizance of any offence except with previous sanction. The word used is "any offence" which would include not only offences under Indian Penal Code, but also offences under any other special Act also. Even the complaint refers to Sections 120-B, 109 and 114 of Indian Penal Code besides Section 3(viii) and (ix) of the Atrocities Act.

7. If we refer to Rule 114 of the Railway Protection Force Rules, 1987, it reads as under :-

"114. Redressal of grievance through litigation:

Any member of the Force seeking redressal of his individual grievances arising out of his employment or conditions of service shall first avail himself of all remedies available to him under these rules as to redressal of grievances before taking the issue to a court of justice. No permission from the department shall, however, be necessary, if a member wants to agitate the matter before Court of justice."

It was argued that in light of what is provided in this Rule, no permission from department is required if a member wants to agitate the matter before Court of justice. However, a close scrutiny of the Rule indicates that this rule relates to redressal of individual grievances arising out of the employment or conditions of service and the redressal is required to be sought under the said Rule and, therefore, it cannot be said that sanction is not required for prosecuting a man for criminal charge.

8. A perusal of the Atrocities Act indicates that by virtue of Section 18 and 19 of the said Act, provisions of Section 438 and 360 of the Code of Criminal Procedure are not applicable to the proceedings under the said Act. The whole scheme of the Act, if perused, does not have a

built-in procedural system for trial of the cases under the Atrocities Act. The trial is, therefore, required to be conducted by following the provisions of Code of Criminal Procedure, 1973. The necessary implication is that provisions of Code of Criminal Procedure other than which are specifically provided to be not applicable would be applicable to the cases under the Atrocities Act. Under these circumstances, in the view of this Court, sanction is necessary in the instant case which is not obtained and, therefore, the complaint lodged and registered by Misc. Criminal Application No.515 of 1995 before the Special Court is not entertainable. The petition, therefore, deserves to be allowed and is, accordingly, allowed. The complaint is hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]

gt